

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3275 of 1984

with

SPECIAL CIVIL APPLICATION No 4336 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N H BARIYA

Versus

GUJARAT ELECTRICITY BOARD

Appearance: In both the Spl. Civil Applications.

MR KS ACHARYA for Petitioners

None present for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/96

ORAL JUDGEMENT

1. Perused the filed and heard learned counsel for the petitioners. The subject matter in both the petitions is somewhat similar and as such, the same are being disposed of by this common judgment.

2. The petitioners by this petitions are challenging the orders of the termination of their services. These orders have been passed by the respondents on 12-7-84 in the Special Civil application No.4336 of 1984 and 22-5-84 in Special Civil Application No.3275 of 1984. The petitioners were the employees of the licensee Nagar Palika, Palanpur in the power house which was run by it. The aforesaid power house was taken over by the Gujarat Electricity Board on 30th June, 1982 and the employees working with the licensee were absorbed in the Board. After absorption, the services of the petitioners were terminated under the orders aforesaid which are challenged by this Special Civil Application before this Court. The termination of the services of the petitioners have been made on the ground that they have not passed the second class wiremen examination within two years. The challenge has been made to the termination inter-alia on the ground that the petitioners were already in the service of the licensee and no such condition could have been inserted while absorbing them as helpers.

3. While absorbing the petitioners in the Board services a condition had been put in the order which reads as under :

You shall have to pass IInd class wiremen test within two (2) years, failing which your services are terminable without any cause or reason.

In accordance with the aforesaid condition, the petitioners were required to pass second class wiremen examination within two years, failing which their services were liable to be terminated. It is not a case of the petitioners that they have passed the second class wiremen examination. The orders of the termination of the services of the petitioners were stayed by this court. The counsel for the petitioners contend that the petitioners except those who attained the age of superannuation would have been continued in service taking into fact that the petitioners have been protected by this court and the termination was only on the ground of the non passing of the second class wiremen examination.

4. The interest of justice will be met in case the orders of termination are set aside and the respondents are directed to now examine the case of the petitioners to see whether they should now pass the second class wiremen test when by now they have attained sufficient long experience on the post they are working for years

together and for such a long time. Only in case after considering the matter, objectively the Board decides that the petitioners who are now in service i.e. who have not attained the age of superannuation should be asked to pass the second class wiremen test, then a reasonable time may be allowed to them to pass the said test. Only in case after taking the decision, the petitioners or any other petitioner fail then there may be question of dispensing of their services and not otherwise. Rule is made absolute in the aforesaid terms.
